

ORIGIN/ACTION

DEPARTMENT OF STATE

AIRGRAM

EXCISE
LIBYA

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HANDLING INDICATOR

TO : Department of State

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FEB 12 4 04 PM '73

FROM : Amembassy TRIPOLI

BRANCH

DATE: February 1, 1973

SUBJECT: Ministry of Petroleum Memorandum Covering
ENI/NOC Participation Agreement

REF : Tripoli 0114

Enclosed is the text of Law No. 131 approving the participation contract between the (Libyan) National Oil Corporation and AGIP (ENI), together with a Ministry of Petroleum Memorandum reported in reftel.

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Schedule of E.O. 11652.
Automatically downgraded at two-year
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Drafted by:

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*Enclosure to
Tripoli A-10*

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LAW NO. 131 OF 1972

Approving the deed of Participation between the National Oil Corporation and AGIP

Source: Official Gazette No. 57 of 1972

In the name of the People
THE REVOLUTIONARY COMMAND COUNCIL

Having Seen:

- the Constitutional Proclamation of 2 Shawal 1389 corresponding to 11 December 1969
- the Petroleum Law No. 25 of 1969 and laws amending it
- Law No. 24 of 1970 establishing the National Oil Corporation and laws amending it
- Oil Concession Deeds No. 82 and 100
- Council of Ministers' Decree of 18 Shaban 1392 corresponding to 26 September 1972, approving the assignment of Concession 81 by Cory Exploration to AGIP
- the decision of the Board of Directors of the National Oil Corporation; and

Acting on the presentation of the Minister of Petroleum in his memorandum No. A 10776 dated 30 Jamadal Awwal 1392, corresponding to 11 July 1972, and concurrence of the Council of Ministers

HEREBY ENACTS THE FOLLOWING LAW

Article 1

The exploitation of oil concession areas 82 and 100 described in the annex to the participation deed between the National Oil Corporation and AGIP is hereby approved in accordance with the conditions fixed in the memorandum of the Minister of Petroleum referred to above.

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Article 2

The Minister of Petroleum shall execute this law which shall come into force on its date of issue and shall be published in the Official Gazette.

REVOLUTIONARY COMMAND COUNCIL

Major Abdul Salam Jalloud
Prime Minister

Issued on 18 Shaban 1392
26 September 1972

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MEMORANDUM

1. One of the major objectives that the Revolutionary Government endeavors to realize in the field of petroleum is participation with operating oil companies in the management and development of oil wealth, through transforming certain traditional concession deeds into participation deeds. Under such deeds the Government, through the National Oil Corporation, will own a certain share that permits actual participation by the national side in the management, development and exploitation of participation areas, own crude oil produced in proportion to said share and dispose of it in foreign markets with the help of the other party until the day comes for the national side to fully exploit its national resources.

2. The Organization of Petroleum Exporting Countries (OPEC), in the Tehran Conference, issued a decision adopting the principle of participation. It left the producing countries to decide the means to be followed to put this decision into effect. The six Gulf States jointly began negotiations with the companies concerned and reached an agreement in principle to give said States a 20% participation. No agreement was reached on the details pertaining to the execution of this agreement.

3. The Government thought not to enter into the joint discussions between the Gulf States and the oil companies because it endeavours to realise an effective and positive participation and not a nominal participation. Therefore, it entered into tedious negotiations in this respect with operating companies, beginning with the Italian firm E.N.I. It is a Government corporation and owns, through its subsidiaries Cory and AGIP, Concessions Nos. 82 and 100. The first concession, namely 82, did not reach the stage of production, though the company had undertaken considerable exploration activity. 47 exploratory and development wells were drilled and certain geological structures were developed where oil was discovered. 4 producer wells, with a total production of 1,424 barrels per day were drilled. The matter requires the formulation of a fixed plan to develop this concession so that it may be benefited from as a producer field. Production in commercial quantities was made from Concession 100. The estimated production amounts to 270,000 barrels per day, with reserve for about 30 years. The company was ready to export beginning February 1972 but the Government has not permitted it to export up until now.

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4. The Italian side submitted several offers to realise the idea of participation. All offers were about the percentage of participation and compensation which will be paid by the Libyan Government consequent on its ownership of an undivided interest in the concession and the ownership by the Government of a proportionate share in all equipment; machinery and installations pertaining to exploration and production and agreement was reached with the Italian side which included the following basic provisions:

- a. Cory Exploration assigns to AGIP Concession Deed No. 82, thus the relations between the Government and the National Oil Corporation will be with one company instead of two. This leads to the avoidance of overlap and the consequent increase in the costs of administrative systems, particularly as AGIP is the company which owns the producing concession.
- b. Transfer of Concession Deeds Nos. 82 and 100 into participation deeds and exploitation of their areas under a participation deed between the National Oil Corporation and AGIP. The share of the Libyan side will be 50% and the Italian side 50%, thus each of the NOC and the Italian sides will own half of the crude oil and other oil products at the wellhead.
- c. Exploration, production, transport and storage of crude oil will be entrusted to AGIP, being the operating company. The said operating company will be responsible before the Management Committee established on an equal basis between the two parties in the participation. The financing of these operations will be shared by the two parties, each in proportion to his share in the participation. The participation deed pertaining to these areas will be considered an independent unit from any other participation deeds; a matter which prevents the merging of financial commitments pertaining to the other participation deed with AGIP, which is still not producing, with those of the new concession deed. Desiring to develop Concession Deed No. 82 the Italian side undertook to formulate a plan for the development and production of areas covered in the agreement to be executed as soon as the joint Management Committee approves it. It will include the basis of operation and accounting system in annexes to be appended to the participation

deed within the framework of the general principles of said deed to be agreed upon by the two parties.

- d. The NOC and the foreign partner shall each undertake to pay its share in the royalty, income tax, surtax and other supplemental taxes in accordance with the Petroleum Law and regulations. The Italian side will sign the 21 March 1971 agreement concerning the posted prices and the change in dollar rate agreement before signing the offered agreement.
- e. The Italian side undertook at the option of the Corporation to fully market the Corporation's oil share or that part thereof which the Corporation requests to be marketed up until the end of 1977 when the Corporation commitment to pay financial compensations expires in order to ensure fulfilment of these commitments for the proceeds of crude oil owned by the Corporation. After this period the Italian partner undertakes to make best efforts to assist the Corporation in marketing. It is hoped that after this period the Corporation would be acquainted with the marketing channels in foreign markets and be able to market its share by itself. Thus it will be realising an aspiration, namely the management, investment, exploitation and marketing of our oil resources. The Italian side agreed that the price to be paid by them to the Corporation for crude oil owned by it is the halfway price based on the posted prices and determined at half the total payments by the Italian side to the Government per barrel of crude exported plus the cost of production per barrel and the posted price of oil of an appropriate gravity and quality and after deduction of a marketing allowance to be mutually agreed upon. Whereas this allowance is part of the sale price of the Corporation oil it is agreed that the Corporation will bear any expenses in this respect noting that the Corporation under its law is tax exempt. The Italian side agreed that the marketing price in 1972 and 1973 is 2.80 dollars per barrel. This price will realise after payment of all the Corporation tax commitments, operating and marketing expenses and compensation installments, a net profit to the Corporation of 9 million dollars per annum. This profit will be added after completion of payment of compensation installments.

- f.. Regarding compensation due to AGIP for expenditure incurred in Concession 82 (subsequent to its assignment by CORI) and Concession 100, it has been agreed to determine this expenditure on the basis of the book value confirmed in the company's books up to 31 December 1971. This arrangement realizes to the Government the advantage of paying the smallest possible amount for this expenditure and simultaneously deducting any amounts the company was claiming for reserves. The details of these amounts are as follows:

First Regarding Concession 82 expenditure amounting to LD 25,773,737, half of which the Government (the Corporation) undertakes to pay consequent on its participation. The Italian side accepted to treat this as capital expenditure in accordance with Article 14 of the Petroleum Law, requesting that it be amortized over 15 years instead of the period of 20 years provided for in the Petroleum Law. Our view is to approve the foregoing since it fulfils an arrangement whereby the Government will not pay these amounts directly, in one payment, or in short term installments, but that these amounts will be amortized considering them expenses deductible from the general income without interest and over 15 years. Since such an arrangement constitutes a deviation from the provisions of the Petroleum Law and a special situation dictated by the circumstances of participation, we have seen fit that this agreement takes the form of a law. In accordance with the Petroleum Law, AGIP will have the right to amortize its part of the expenditure in Concession 82, after its assignment by CORI, on the basis of the provisions in Article 14 of the Law.

Second With respect to the amounts relating to Concession 100 which, up to 31 December 1972 reached LD 41,021,782, the Italian Side accepted that it be paid in five annual installments at the simple interest of 3.5%, compared to the interest recommended by the consulting companies to the Gulf States and reaching 6%. The Government is obligated to payment of half of these amounts..

Third As to the amounts paid by AGIP on the two Concessions as of 1 January 1972 and until the date of signing this Agreement, which are entered in the company books, it has been agreed that the Corporation will pay such amounts in full after it arranges for their audit within a specified period.

Inasmuch as these amounts do not constitute an income, since they represent the value of the

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Corporation's participation in ownership of half the rights of the two Concession Deeds, it was agreed that the Corporation will bear any taxes imposed in this respect, noting that in accordance with its Law, the Corporation is exempt of any taxes.

- g. As to resolving disputes between the two sides, it was agreed that they be settled amicably. However, if no agreement is reached, the matter will be referred to arbitration conducted in accordance with the rules of the International Chamber of Commerce in Paris, provided that such arbitration is conducted through each of the two sides selecting an arbitrator. The Italian Side adhered to the stipulations of the Concession Deed and the Joint Venture Agreement providing for arbitration on the basis of the stipulations of the Petroleum Law (Clause 28 of the Concession Deed) which provides for appointing one arbitrator. However, it was possible to convince the Italian Side of accepting this text which had already been endorsed, as an arbitration procedure in certain public works contracts concluded with the National Oil Corporation, and sanctioned by the Council of Ministers.

5. We put the matter before the Council of Ministers for approving the assignment of Concession 82 to AGIP, approving the Participation Agreement between the National Oil Corporation and the Italian Company AGIP in respect of the two Concessions Nos. 82 and 100 under the conditions explained in this memorandum, and authorizing the Ministry of Petroleum and the Corporation to conclude the processing and signing of the Participation Agreement for the following reasons:

First

This offer includes securing a high percentage of participation, namely 50% (fifty percent). The Libyan Arab Republic has not secured such a ratio in any other agreement of participation concluded with the National Oil Corporation. For example, the Joint Venture Agreement between the Corporation and AGIP concluded in May 1969 provided for a Corporation share of 25% (twenty five percent) and the rate of participation will only reach 50% when production attains 550,000 barrels per day. As such, an effective and positive participation will be fulfilled thus realizing for the State one principle of the First of September Revolution, namely freeing the national economy of foreign domination and influence.

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Second

This participation is actually in a producing concession and not one connected with concessions where discovering oil still is an unfulfilled dream. As such, upon signing the agreement, the Corporation will own a large share of the crude oil with which it will enter the international market assured of marketing it through the knowledge of the other partner for a period of not less than five years. This will enable the Corporation, subsequent to the expiration of five years, to enter the field of marketing on firm ground.

Third

This participation strengthens the position of the Libyan Arab Republic in the world oil industry. For when the Gulf States have only achieved a nominal participation not exceeding 20%, the Libyan Arab Republic will secure through this participation two and a half fold the achievement of the Gulf States.

Fourth

This participation will realize to the LAR, in addition to the above, an annual increase in its revenues over and above its income, had the AGIP Concession continued in the conventional form. From this income compensation due to the Italian company will be paid. A net profit will remain to the Corporation and the annual profit after settlement of compensation instalments will be an absolute right of the State.

All this is in addition to what could be expected of hopeful results in the area of Concession 82 by the application of a successful development plan. The Corporation will participate in preparing for such a plan and will supervise its execution. The basis of participation and what is connected therewith of agreement over operation and the accounting system were presented to the Board of Directors of the National Oil Corporation which approved it.

6. We put the matter before the Council of Ministers for approval of the Italian Side's offer for participation with the National Oil Corporation in accordance with the conditions which we explained in this memorandum, and for authorizing the Ministry and the Corporation to complete the procedure and signing of the Participation Agreement.

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The approval of the Council of Ministers in principle is sought for providing the Corporation with a loan for covering the amounts due to be paid as compensation to the Italian Side during the present financial year to be paid back from sale of crude oil owned by the Corporation. We put before the Council of Ministers for approval and issuance of a draft resolution by said Council approving CORI's assignment to AGIP of Concession 82, and a draft law in respect of participation.

IZZIDIN AL MABROUK

Minister of Petroleum

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